

(3) The STA is to allow interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The STA is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(b) *Limit on STA term.* The FCC may grant STAs valid for a period not to exceed 180 days under the provisions of § 309(f) of the Communications Act of 1934, as amended, (47 U.S.C. 309(f)) if extraordinary circumstances so require, and pending the filing of an application for regular operation. The FCC may grant extensions of STAs for a period of 180 days, but the applicant must show that extraordinary circumstances warrant such an extension.

#### § 22.127 Public notices.

Periodically, the FCC issues Public Notices listing major filings and other information of public significance. Categories of Public Notice listings are as follows:

(a) *Accepted for filing.* Acceptance for filing of applications and major amendments thereto.

(b) *Actions.* FCC actions on pending applications previously listed as accepted for filing.

(c) *Informative listings.* Information that the FCC, in its discretion, believes to be of public significance. Such listings do not create any rights to file oppositions or other pleadings.

#### § 22.128 Dismissal of applications.

The FCC may dismiss any application for authorization, assignment of authorization, or consent to transfer of control in the Public Mobile Services, upon request by the applicant, or if the application is untimely filed, or if the application is mutually exclusive with another application that is selected or granted in accordance with the rules in this part, or for failure to prosecute, or if the requested spectrum is not available, or if the application is found to be defective. Such dismissal may be “without prejudice,” meaning that the FCC may accept from the applicant another application for the same purpose

at any later time, or “with prejudice,” meaning that the FCC will not accept from the applicant another application for the same purpose for a period of one year. Unless otherwise provided in this part, a dismissed application will not be returned to the applicant.

(a) *Dismissal at request of applicant.* Any applicant may request that its application be returned or dismissed. A request for the return of an application after it has been listed on Public Notice as tentatively accepted for filing is considered to be a request for dismissal of that application without prejudice.

(1) If the applicant requests dismissal of its application with prejudice, the FCC will dismiss that application with prejudice.

(2) If the applicant requests dismissal of its application without prejudice, the FCC will dismiss that application without prejudice, unless:

(i) It has been designated for comparative hearing;

(ii) It has been selected in a random selection process; or,

(iii) It is an application for which the applicant submitted the winning bid in a competitive bidding process.

(3) If the applicant requests dismissal of its application for which it submitted the winning bid in a competitive bidding process, the FCC will dismiss that application with prejudice. If the applicant requests dismissal of its application after that application has been designated for comparative hearing or selected in a random selection process, it may submit a written petition requesting that the dismissal be without prejudice. Such petition must demonstrate good cause and comply with § 22.129 and be served upon all parties of record. The FCC may grant such petition and dismiss the application without prejudice or deny the petition and dismiss the application with prejudice.

(b) *Dismissal of mutually exclusive applications not granted.* The FCC may dismiss mutually exclusive applications:

(1) For which the applicant did not submit the winning bid in a competitive bidding process;

(2) That are included in a random selection process but are not granted; or,

(3) That receive comparative consideration in a hearing but are not granted by order of the presiding officer.

(c) *Dismissal for failure to prosecute.* The FCC may dismiss applications for failure of the applicant to prosecute or for failure of the applicant to respond substantially within a specified time period to official correspondence or requests for additional information. Such dismissal will generally be without prejudice if the failure to prosecute or respond occurred prior to designation of the application for comparative hearing or prior to selection of the application in a random selection process, but may be with prejudice in cases of non-compliance with § 22.129. Dismissal will generally be with prejudice if the failure to prosecute or respond occurred after designation of the application for comparative hearing or after selection of the application in a random selection process. The FCC may dismiss applications with prejudice for failure of the applicant to comply with requirements related to a competitive bidding process.

(d) *Dismissal as defective.* The FCC may dismiss without prejudice applications that it finds to be defective. Applications for authorization or assignment of authorization are defective if:

(1) They are unsigned or incomplete with respect to required answers to questions, informational showings, or other matters of a formal character; or,

(2) They request an authorization that would not comply with one or more of the FCC rules and do not contain a request for waiver of these rule(s), or in the event that the FCC denies such a waiver request, do not contain an alternative proposal that fully complies with the rules;

(e) *Dismissal because spectrum not available.* The FCC may dismiss applications that request spectrum which is unavailable because:

(1) It is not allocated for assignment in the Public Mobile Services (see part 2 of this chapter);

(2) It was previously assigned to another licensee on an exclusive basis or cannot be assigned to the applicant without causing interference; or

(3) Reasonable efforts have been made to coordinate the proposed facil-

ity with foreign administrations under applicable international agreements, and an unfavorable response (harmful interference anticipated) has been received.

(f) *Dismissal as untimely.* The FCC may dismiss without prejudice applications that are prematurely or late filed, including applications filed prior to the opening date or after the closing date of a filing window, or after the cut-off date for a mutually exclusive application filing group.

#### **§ 22.129 Agreements to dismiss applications, amendments or pleadings.**

Parties that have filed an application in the Public Mobile Services that is mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application or an amendment thereto, must obtain the approval of the FCC. Parties that have filed or threatened to file a petition to deny, informal objection or other pleading against a pending application in the Public Mobile Services and then seek to withdraw or request dismissal of, or refrain from filing, the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the FCC.

(a) The party withdrawing or requesting dismissal of its application, petition to deny, informal objection or other pleading or refraining from filing a pleading must submit to the FCC a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(1) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, or threat to file a pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to *bona fide* merger agreements;